89-36

Supreme Court, U.S.
FILED
MAY 4 1989
JOSEPH F. SPANIOL, JR.
CLERK

In The Supreme Court of the United States of America

October Term — 1988.

Leo M. Mullen, M.D. Pro Se

Petitioner

versus

Land Parcel Liquidators et al

Tamara Steinsapir : Marion Marshal,

Donald A. Rosen, DBA, T.D. Foreclosure Co.

Defendants

Case No. 88-5698 - 9th Cir

DC No. CR-86-1456-JMI

Petition for Writ of Certiorari

to the

Supreme Court of the United States

Through the Ninth Court of Appeals,

P.O. Box 547, 94101-547

San Francisco, California

Leo M. Mullen, M.D. Pro Se

Counsel of Record, Pro Se

4443 Paseo Blvd., Kansas City, MO 64110

Phone 816-921-5411 or 816-921-5412

Emerg. No. Nites, 913-362-2602.

(signed) Leo M. Mullen, M.D. Pro Se.

TABLE OF CONTENTS

Questions Presented for Review 2

Statement of Jurisdiction 3

Parties to the Proceedings 4

Statement of the Case 6

Reasons For Granting the Writ of Certiorari 6

Table of Authorities 7

Opinions Below 8–9

Conclusion 25

QUESTIONS PRESENTED FOR REVIEW BY THE SUPREME COURT OF THE UNITED STATES

1. ALMOST immediately it became evident that in this case that I was dealing with a JUDGE AND HIS DEPUTY AND A DEFENDANT WHO WERE OF THE SAME CHURCH AND AS SUCH THE record reveals that there was an immediate bias and prejudice which prevented the case from being handled in the usual manner. FILINGS were consistently returned because of refusal to file by the deputy clerk of the HON. JAMES IDEMAN. THE DEPUTY WAS in contact with TAMARA STEINSAPIR and thus their religious affiliation prevented the case from being handled properly. EVEN WHEN FILINGS HAD BEEN MADE the clerk for the JUDGE JAMES IDEMAN whose name was LORI BLITZENSTEIN was refusing to file the filings received in the mail. IT was necessary to make two trips to CALIFORNIA before the filing of Aug. 21st, 1987 could be gotten in the file and the big deal that is made of the late time interval is really the fault of the court rather than myself. The motion of 9-6-1986 was returned by LORI BLITZENSTEIN unfiled and with letters and other attempts to file it was finally necessary to get another girl in another office to finally get the motion for retrial filed. TO believe that a case filed only about 5 months is dismissed because of lack of prosecution is absurd since most cases go on for more than a year before any trial. THE court has erred from the beginning because of the religious background of the parties who were striving to get the case dismissed and thwarting the legal process. SEE PETITION FOR REHEARING EN BANC which was denied MARCH 6th, 1989. FROM THE FILING DATE OF MARCH 1986 until the dismissal on AUGUST 21st, 1986, there is a five month span which is obviously indicative of a case being dismissed prematurely and the case must be sent back for trial to bring the criminals involved to justice. UNDER Rule 60-B-6 there is no time limit and the fact that JUDGE RAFEEDIE and the APPELLATE COURT RELIED on the one year rule is also evidence that the case has so many errors that i must be tried in court under an unbiased and unprejudiced judge. JUDGE JAMES IDEMAN is obviously unable to continue and a new judge must be assigned for trial. A study of this case reveals complete and total inability of the court to function without fraud and perjury.

2. JUDGE RAFEEDIE AND THE APPELLATE COURT rely on the fact that I was delinquent and it is obvious the court was so

biased and prejudiced it took two trips to CALIFORNIA to get the motion for rehearing filed due to religious prejudices PREVAILING.

3. The mere failure to appear at a conference in the first few months of a case is not in any way a need for dismissal if the court were not biased and prejudiced. THIS is evident from the facts outlined in the hearing on AUGUST 26th, 1986 in which the JUDGE IDEMAN stated he had before him a motion for continuance and did not act on it. OBVIOUSLY if the court is not in any way cooperating with a plaintiff the case goes awry and even when I was willing to send an attorney to the court this was not allowed. TO FAIL TO ALLOW an attorney to appear and the conduct of JUDGE IDEMAN was that he wanted to get rid of the case when it was obvious that there was extortion involved indicates the court is either paid off in some way or biased and prejudiced. THE filing of the HON. JUDGE RAFEEDIE is full of errors and the filing made 12-5-1988 finds myself as a frivolous party when it was obvious that the court is dealing with extortion. To have the court uphold anything like it outlined is really without precedence and the case must be returned for trial due to the continual errors involved. JUDGE IDEMAN was involved in total errors and this was continued by JUDGE RAFEEDIE and also JUDGES of the appellate which write up on 12-5-1988 is completely without merit at all.

4. STREWN through the whole case are notices to the court that the case is being thrown by the judge and his deputy due to affiliations with the defendant TAMARA STEINSAPIR and this is exemplified several times in accusing the plaintiff of being the one involved in failure. ACTUALLY when the court sees extortion and tries to get the party guilty of fleecing the plaintiff out of the case without trial there is no justice in the civil courts at all. ACTUALLY the case SUPERMARKET of HOMES vs SAN FERNANDO VALLEY is favorable to the plaintiff and yet the court uses this for the affirmation of what has gone on. PRO SE FILINGS should be certainly given at least a chance to prove their case rather than the court going along with crime in the civil courts. THE COURT ERRED in using 60-B-1 when 60-B-6 applies and a new trial must be granted since JUDGE IDEMAN by his own admission in the hearing was able to show he had no interest in the case whatsoever. SEE transcript of hearing.

PARTIES TO THE PROCEEDINGS AND CERTIFICATE OF SERVICE IN ADDITION TO THE PARTIES mentionedin the caption I am enclosing the following lawyers who are involved:

KLINT JAMES McKAY, and LAWRENCE ALLEN,
5950 CANOGA AV. SUITE 440,
WOODLAND HILLS CAL. 91367. 818-716-1700
ATTYs for HILLWOOD ASSURANCE AA AND MARION MARSHAL.

PAUL K. TAMAROFF, esq.
4-CARLISLE WAY,
ATLANTA GEORGIA, 30308 1-404-331-2864.
ATTY FOR LAND PARCEL LIQUIDATORS and TAMARA STEINSAPIR,

JACK ALTMAN Esq.
18040 SHERMAN WAY
SUITE 350
RESEDA CAL 91335

COPIES prepared to the SUP COURT WASHINGTON D.C. on June 2nd, 1989 and prepaid to the above parties same date.

(signed) Leo M. Mullen, M.D., Pro Se

LEO M. MULLEN, M.D. PRO SE
4443 PASEO BLVD.
KANSAS CITY, MO 64110
1-816-921-5411 or nites 1-913-362-2602.

IN THE SUPREME COURT OF
THE UNITED STATES OF AMERICA

PETITION FOR WRIT OF CERTIORARI

THE plaintiff, myself, filed in April of 1986 and because of problems with filing due to bias and prejudice, I was unable to make it to CALIFORNIA in AUG. 86. THIS is a criminal case and the original petition has not been read by those involved since the decisions allow crime to prevail. IT would have made no difference whether I attended the conference or not since my attorney was advised over the phone the case was to be dismissed one way or another. There was evidence of collaboration with the judge, his secretary, and TAMARA STEINSAPIR who all belonged to the same church. THE court erred in not allowing a continuance which is mentioned in the write up by the girl who took the transcript of the original hearing. JUDGE RAFEEDIE just went along with JUDGE JAMES IDEMAN who is a church member with TAMARA STEINSAPIR and his deputy. I finally went over her head to get the notice filed AUGUST 20th, 1987 and this resulted in JUDGE Rafeedie coming on the case and his decision was appealed but the APPEALS Court in SAN FRANCISCO erred in not going over the original petition that was filed in only a few months before the case was dismissed which absolutely unusual. THE type of justice herein is going along with crime and the dismissal does not follow along with the other cases which have been tried like this. THE case must be returned for trial so that crime will not pay. THIS decision errs in that it is entirely opposite to the 4th Court of Appeals in LINK VS WABASH RR, and particularly all the other cases mentioned including RE CRIMIDAS ESTATE ALASKA, 1953 14-FRD,15,14,AL.234.

IT was necessary to make two trips to CALIFORNIA but that was only to get my filing since they were returned as outlined in the case by the deputy for JUDGE JAMES IDEMAN.

Respectfully submitted

(signed) Leo M. Mullen, M.D. Pro Se

Leo M. Mullen, M.D. Pro Se, 4443 Paseo Blvd., Kansas City, MO 64110 1-816-921-5411.

REASONS FOR GRANTING THE WRIT OF CERTIORARI

CERTIORARI SHOULD BE GRANTED because the decisions made to date by the D.C. JUDGES PARTICULARLY JUDGE IDEMAN CONFLICT with other court of APPEALS DECISIONS AND THE 4th COURT OF APPEALS DECISION in LINK vs WABASH RRCO. 370 U.S. 626-82-S. CT. 1386-(1962) JUDGE IDEMAN had the case only 6 months and although many filings were made, most were returned and there was no waiting almost a year because the court kept turning down filings without proper justification. THIS IS A criminal case and clearly the 9th Court of Appeals has erred in allowing criminality to prevail. THE case RE CRIMIDAS ESTATE D.C. ALASKA 1953, 14-F.R.D. 15, 14 ALASKA-234 clearly outline that THE D.C. JUDGES and the JUDGES OF THE 9TH COURT OF APPEALS are in error. THE 9th Court write up of the case faults myself for failure to PROSECUTE and this is not true as they are not cognizant of the facts at all. THE return of the filing 9-6-1986 does not show non-cooperation by myself but RATHER an attempt to cooperate with the court which was obviously going along with corruption and criminal acts as outlined in the petition. RULE 60-B was used by the 9th Court and RULE 60-B-6 applies which does not become untimely and in addition the filing was finally gotten in by making a trip to CALIFORNIA since JUDGE IDEMAN would not allow the filing until I wennt over myself and got the filing made on AUGUST 20th, 1987 which is timely.

TABLE OF AUTHORITIES

Cases

Becker v. Safelite Glass Co., 244 F. Supp. 625 (1965, DC Kan.) 8

Becker v. Rezley, 324 F2d 269 (1963 CA10, Okla.) 8

Durham v. Florida E.C. RR Co., 395 F2d 366 (1967 CA5, Fla.) 9

Dyotherm Corp. v. Turbo Machine Co., 392 F2d 146 (1968 CA3, Pa.) 5

Flaska v. Little River, 389 F2d 885 (1968 CA5, Fla.) 9

Glo Co. v. Murchison and Co., 397 F2d 928 (1967 CA3, Del.) 8

Hicks v. Bekins Moving and Storage Co., 115 F2d 406 (1940 CA9, Wash.) 9

Industrial Building Materials Inc. v. Interchemical Corp., 453 F2d 347 (1972 CA7, Tex.) 6

Link v. Wabash RR Co., 370 U.S. 626, 92 S. Ct. 1386 (1962) 10,11

Pond v. Braniff Airways, 453 F2d 347 (1972 CA7, Tex.) 6

Poulis v. State Farm Fir and Casualty Co., 747 F2d 863 (1984 CA3) 9,10

Reizakis v. Loy, 490 F2d 1132 (1974 CA4, Vir.) 9

Scarborough v. Eubanks, 747 F2d 871 (1984 CA3) 9,10

Tinkoff v. Jarecks, 208 F2d 861 (1952 CA7, Ill.) 9

Rules

Rule 41(b) Federal Rules of Civil Procedure 5

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED
MAR 6
1989

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

LEO M. MULLEN, M.D.	)	No. 88-5698
	)	
Plaintiff-Appellant,	)	DC No. CF-86-1456-JMI
	)	
vs.	)	
	)	
LAND PARCEL LIQUIDATORS CORPORATION;	)	ORDER
TAMARA STEINSAPIR;	)	
MARION MARSHALL;	)	
DONALD A. ROSEN, dba T.D. FORECLOSURE COMPANY	)	
	)	
Defendants - Appellees.	)	
	)	

Before: BRUNETTI, KOZINSKI and THOMPSON, Circuit Judges

The panel has voted to reject appellant's addendum to request for hearing enbanc.

The full court has been advised of the addendum to request for hearing en banc, and no judge of the court has requested a vote on the suggestion for rehearing en banc. Fed. R. App. P. 35(b).

The addendum to request for hearing en banc is denied.

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED
DEC 5
1988

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

LEO M. MULLEN, M.D.	)	No. 88-5698
	)	
Plaintiff-Appellant,	)	DC No. CF-86-1456-JMI
	)	
vs.	)	
	)	
LAND PARCEL LIQUIDATORS CORPORATION; TAMARA STEINSAPIR; MARION MARSHALL; DONALD A. ROSEN, dba T.D. FORECLOSURE COMPANY	)	MEMORANDUM*
	)	
Defendants - Appellees.	)	

Appeal from the United States District Court
for the District of Central District of California
Edward Rafeedie, District Judge, Presiding

Submitted October 31, 1988**

Before: BRUNETTI, KOZINSKI and THOMPSON, Circuit Judges

OVERVIEW

Leo M. Mullen, .M.D. (Mullen), appeals pro se the district court's denial of Mullen's Rule 60(b) motion for relief from a judgment of dismissal for failure to prosecute. We affirm. On March 7, 1986 Mullen filed a pro se complaint alleging that Land Parcel

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** The panel finds this case appropriate for submission without oral argument pursuant to Fed. R. App. P. 34(a); Circuit Rule 34-4.

Liquidators (LPL) had made fraudulent misrepresentations with respect to the location and value of the lots he purchased from LPL.

On June 19, 1986 the court, sua sponte, ordered all parties to appear for a mandatory settlement conference scheduled for August 25, 1986. Mullen made a motion for a continuance of the mandatory settlement conference based upon the ground that he had misread the date on the order. The motion was returned to Mullen due to uncured filing defects.

On September 5, 1986 the court entered an order dismissing Mullen's action without prejudice for lack of prosecution and noncoperation because Mullen failed to attend the mandatory settlement conference. On September 6, 1986 Mullen filed a motion to the court to set aside the order, which the court returned due to filing defects.

Nearly one year later, on August 21, 1987, Mullen moved the district court to set aside the September 5, 1986 court order, pursuant to Fed. R. Civ. P. 60(b), and requested a "change of judge". The case was reassigned to Judge Rafeedie, who denied the motion to set aside the prior judgment on the ground that Mullen's misunderstanding of the date for the settlement conference did not constitute excusable neglect. The court also found that Mullen's motion was not made within a "reasonable time," as required by Rule 60(b), and was, therefore, untimely. Mullen timely appeals.

DISCUSSION

This court reviews dismissals for failure to prosecute for an abuse of discretion. Supermarket of Homes v. San Fernando Valley Bd., 786 F.2d 1400, 1410 (9th Cir. 1986).

A Rule 60(b) motion must be made within a "reasonable time." Fed. R. Civ. P. 60(b); Ashford v. Stewart, 657 F.2d 1053, 1055 (9th Cir. 1981). "What constitutes 'reasonable time' depends upon the facts of each case, taking into consideration the interest in finality, the reason for delay, the practical ability of the litigant to learn earlier of the grounds relied upon, and prejudice to the other parties." Id.

Here, Mullen's 60(b) motion was made on August 21, 1987, almost one full year from the district court's entry of judgment on September 5, 1986. The motion is based on the same contentions Mullen relied upon nearly one year earlier in a procedurally defective 60(b) motion he attempted to file on September 6, 1986. Thus, Mullen knew the grounds for this motion nearly one year before

filing it. Mullen provides no explanation for his delay. Accordingly, Mullen's Rule 60(b) motion was not made within a reasonable time. See Meadows v. Dominican Republic, 817 F.2d 517, 520-21 (9th Cir. 1987)(60(b) motion may be denied, although filed within one year period, if the defendant is guilty of unreasonable delay).

Rule 60(b)(1) provides that this court may relieve Mullen from the district court's final judgment for mistake, inadvertance, surprise or excusable neglect. See Pena v. Seguras LA Commercial, S.A., 770 F.2d 811, 815 (9th Cir. 1985). The court applies a three prong test to determine whether a party is entitled to relief: (1) whether the appellees will be prejudiced if the motion to vacate the dismissal is granted; (2) whether Mullen has a meritorious defense; and (3) whether culpable conduct led to the default. Id.

Mullen's failure to appear at the mandatory settlement conference was the result of his own culpable conduct. He received the court order setting the date of the conference and even if he had inadvertantly miscalendared the conference, opposing counsel reminded him of the date nine days prior to the status conference. Accordingly, relief is not available under Rule 60(b)(1). 1/

Rule 60(b)(6) provides that a party may seek relief from the operation of the judgment for "any other reason." However, relief under this subsection requires a showing of "extraordinary circumstances." Lafarge Conseils Et Etudes, S.A. v. Kaiser Cement, 791 F.2d 1334, 1338 (9th Cir. 1986).

Here, Mullen contends that Judge Ideman and his clerk, Lori Blitstein, were biased and prejudiced against him. However, any claimed bias or prejudice on the part of Judge Ideman or Blitstein could not influence the denial of Mullen's 60(b) motion because the case was reassigned and decided by Judge Rafeedie. Moreover, a judge is required to recuse himself only if bias or prejudice is directed against a party and stems from an extra-judicial source. Hemington v. Sonoma County, 834 F.2d 1488, 1501-3 (9th Cir. 1987), as amended, Nos. 86-2620 and 86-2728, slip op. at 11255 (9th Cir. Sept. 13,. 1988). There is no evidence of any bias or prejudice against Mullen stemming from an extrajudicial source. Accordingly, the district court properly denied Mullen's Rule 60(b) motion.

1/ This court need not consider the other two prongs of the test to uphold the district court. See Pena v. Seguras LA Comercial, S.A., 770 F.2d at 815.

"This court may award attorney's fees and single or double costs to the prevailing party when an appeal is frivolous." See Fed. R. App. P. 38; McCarthy v. Mays, 827 F.2d 1310, 1318 (9th Cir. 1987).

Mullen's appeal is frivolous because his motion is based upon completely unsubstantiated claims of excusable neglect made almost one full year after he attempted to file a procedurally defective motion based upon the same claims. Mullen provides no explanation for his delay. Accordingly, appellees' request for attorney's fees and costs are granted.

AFFIRMED.

LEO M. MULLEN, M.D.
4443 PASEO BL.K.C.MO. 64110
1-816-921-5411.

ATTORNEY PRO SE.
LEO M. MULLEN, M.D. PLAINTIFF

Exhibit 8.

RECEIVED AND RETURNED OCT 30 1986

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

LEO M. MULLEN, M.D. PLAINTIFF vs LAND PARCELS LIQUIDATORS, INCORP. TAMARA STEINSAPIR, MARION MARSHAL, HILLWOOD, ASSURANCE and DONALD A. ROSEN -DBA- T.D. FORECLOSURE DEFENDANTS	) HEARING DATE 10-20-1986-) 10:00 A.M. CASE NUMBER-) CF-86-1456-(JMX)KX)) MOTION FOR CRIMINAL) PROSECUTION IN ABOVE) CASE for LORI BLITSTEIN,) PAUL K. TAMAROFF,) TAMARA STEINSAPIR,) LAWRENCE ALLEN and) KLINT MCKAY of ALLEN) AND ALLEN, LAW FIRM.) CRIMINAL investigation is to) be ordered by the HON.) JAMES M. IDEMAN with) recision of his orders of 8-25-86) and 8-5-86 in the interests of) justice.

Since filing of above case, lawyers Paul Tamaroff and Lawrence Allen have consistently filed false information with the court. Lori Blitstien has allegedly met with Tamara Steinsapir and used her influence to cause the Hon. James Ideman to be biased and prejudiced. See affidavit filed by Leo M. Mullen, M.D. on 9-9-1986. Also see affidavit filed by Peter Koppe Esq. on the same date and dated as of 9-4-1986. The filings by the defendants lawyers and the action of Lori Blitstien along with the Tamara Steinsapir are criminal tactics with deliberate and wilful intent and deprive the plain-

tiff of justice. Criminal prosecution is to be recommended by the Hon. James M. Ideman, in the state cts. or Fed. Ct.

(signed) Leo M. Mullen, M.D. Pro Se

Cer. of Service- Prepaid this 10th day of Oct-86 to the Ct. and all. Leo M. Mullen, M.D. 4443 Paseo Blk K.D.MO. 64110-1-816-921-5411.

(signed) Leo M. Mullen, M.D. Pro Se

LEO M. MULLEN, M.D.
PRO SE.
4443 PASEO BLVD.
KANSAS CITY, MO.
1-816-921-5411

FILED
AUG 21
87

ATTORNEY PRO SE.

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CAL.

LEO M. MULLEN, M.D.	)	CASE NO. 85—1456-J-M-I-(XX)
PLAINTIFF	)	MOTION TO SET ASIDE
LAND PARCEL	)	JUDGMENT OF 8-25-86,
LIQUIDATORS ET AL.	)	UNDER RULE 60-B- HEARING
DEFENDANTS	)	DATE-9-21-87 - 10:00 A.M.

and for change of judge. The case was filed 3-7-86 and dismissed in less than 6 months. Which does not justify dismissal for lack of prosecution. The file shows that Lori Blitstien was in contact with defendant Tamara Steinsapir and admitted to Peter Koppe Atty in K.C. Mo. that the case had been fixed and was to be dismissed. The plaintiff had thought the order read Aug 27th, 86 rather than Aug. 25th, 86 and a continuance was not allowed. The facts are still under investigation and 59-B rule could not be used.Under 60-B intrinsic or extrinsic fraud is obvious, with define and obvious misconduct. Lori Blitstien either or indirectly was instrumental in being bribed and thus the case was fixed. With such obstacles and the discussion with Atty Koppe there was such obvious fraud involved that nothing could be accomplished before Judge Ideman. Such conduct means the judgement should be set aside under rule 60- B-6. Evidence will be obvious that fraud is present and the exhibits will be attached to show this. See 11 exhibits—change of judge requested.

Respectfully submitted, Leo M. Mullen, M.D.

(signed) Leo M. Mullen, M.D.

ENTERED
CLERK, U.S. DISTRICT
COURT
DEC 22 1987

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

LEO M. MULLEN, M.D., Plaintiff,	)	NO. CV 86-1456-ER
v.	)	
LAND PARCEL LIQUIDATORS, INC., TAMARA STEINSAPIR, MARION MARSHAL, HILLWOOD ASSURANCE AND DONALD A. ROSEN, DBA T-D-FORECLOSURE, Defendants.	)	ORDER DENYING MOTION TO SET ASIDE JUDGMENT AND DENYING REQUEST FOR ATTORNEY'S FEES

Plaintiff, proceeding in proper, filed a motion to Set Aside Judgment on August 21, 1987. Defendants submitted written oppositions to the motion and defendants Land Parcel Liquidators and Tamara Steinsapir have requested attorney's fees pursuant to Rule 11 of the Federal Rules of Civil Procedure. The Court has determined that there is no need for a hearing and, therefore, the case will be decided based upon the papers submitted. The Court has considered the papers filed and denies the Motion to Set Aside Judgment and the Motion for Attorney's Fees.

Judge Ideman dismissed this case without prejudice on September 4, 1986. The case was dismissed on account of plaintiff's lack of prosecution and failure to cooperate.

In the case, a status conference was set for August 25, 1986 pursuant to a Court Order dated June 19, 1986. Plaintiff misunderstood and misinterpreted the date. Plaintiff thought that the Man-

datory Status Conference was set for August 27, 1986. On August 18, 1986, defendants' attorney called plaintiff to remind him about the Mandatory Status Conference set for August 25. Plaintiff has his attorney, Peter Koppe, call Judge Ideman to request a continuance or to allow Koppe (an out-of-state attorney who was not an attorney of record) to appear for plaintiff. Judge Ideman's court clerk, Lori Blitstein, told Koppe that he could not appear for plaintiff and added that plaintiff has continually failed to comply with the Court's orders and that is was obvious that plaintiff has no intention of complying with the Court's requirements. (Declaration of Koppe).

Plaintiff was notified of the Court's dismissal and attempted to file a motion to set aside judgment on September 6, 1986. The motion was returned shortly after it was sent due to improper form. The present motion was filed on August 21, 1987.

Rule 60(b) of the Federal Rules of Civil Procedure provides that a court may set aside a judgment for the following reasons: mistake, inadvertence, surprise or excusable neglect; fraud or other misconduct of an adverse party; or any other reason justifying relief from the operation of judgment. However, the motion shall be made within a reasonable time and if the motion is based upon subsections (b) (1) or (3) it must be made within a year of judgment at the latest.

Plaintiff's misunderstanding of when the Mandatory Status Conference was scheduled does not constitute mistake, inadvertence, surprise or excusable neglect under Rule 60(b) (1). The rule is not to be invoked to give relief to a party whose error is traceable to a lack of care. 7 Moore, Federal Practice, 60.22(2), at 60-181; Sadowski v. Bombardier Ltd., 539 F.2d 615 (7th Cir. 1976). Plaintiff's failure to learn of the date set for the Mandatory Status Conference is not based upon misunderstanding some technical legal issue. The date set for the Mandatory Status Conference could be readily ascertained by reading the Court's Order. Plaintiff's carelessness does not justify setting aside judgment.

Plaintiff's allegations that Judge Ideman was bribed or that the case was fixed are totally unsupported and stand as bare allegations of fraud. Plaintiff was allegedly told of the bribe or case fixing by his attorney Koppe. However, plaintiff has failed to include a declaration of Koppe supporting the allegations. The bare allegations of bribery do not justify setting aside judgment when the allegations are not supported by any competent evidence.

Finally, this motion is untimely because it was not filed in a reasonable time that constitutes a reasonable time depends upon the facts of each case, taking into consideration the following factors: the interest in finality the reason for delay, the practical ability of the litigant to learn earlier of the grounds relied upon, and prejudice to the other parties.

Ashford v. Steuart, 657 F.2d 1053 (9th Cir. 1981). In this case, plaintiff became aware of the grounds he has relied upon almost immediately after Judge Ideman issued the Order dismissing the case. Plaintiff waited almost a year after the Order before filing this motion. Plaintiff has failed to present any reasons justifying the delay in bringing this motion. Moreover, as the Second Circuit has stated: "Although the fact that a motion was made barely within the one year time limit gives the court the power to entertain it, as the delay in making the motion approaches one year there should be a corresponding increase in the burden that must be carried to show that the delay was reasonable." Amoco Overseas v. Compagnie Nationale Algerienne, 605 F.dd 648 (2d Cir. 1979). Thus, the motion is denied because it was not made within a reasonable time.

Defendant's motion for attorney's fees is also denied. This motion to set aside the Judgment is not frivolous with the meaning of Rule 11. At least with respect to the Rule 60(b) (1) claim, plaintiff has made a good faith argument.

Therefore, the Motion to Set Aside Judgment and the request for attorney's fees are hereby DENIED.

IT IS SO ORDERED.

The Court further orders the Clerk to serve copies of this Order on all parties by United States mail.

DATED: December 18, 1987.

(signed) Edward Rafeedie

EDWARD RAFEEDIE
United States District Judge

LEO M. MULLEN, M.D.
4443 PASEO BLVD.
KANSAS CITY, MO. 64110

EXHIBIT D

RECEIVED

LEO M. MULLEN, M.D. PRO SE.

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA,
AT LOS ANGELES

LEO M. MULLEN, M.D.	)	CASE NUMBER
PLAINTIFF	)	CV-86-1456-(JMI)-KX.
	)	
vs	)	MOTION FOR CONTINUANCE
	)	WITH SUGGESTIONS
LAND PARCELS	)	
CORP et al.	)	HEARING SCHEDULED
	)	FOR AUG. 25th, 86
DEFENDANTS	)	
	)	But Plaintiff misread date, as 8-27-86

Comes now LEO M. MULLEN, M.D. and humbly asks the HONORABLE court to continue the hearing of 8-25-86 as plaintiff misread the date as 8-27-86 and was unaware of this error until a letter arriving from ATTY TAMAROFF notified plaintiff of this error. LETTER arrived 8-16-86. PLAINTIFF sent a notice separately to the court but has had so much with returns because of technicalities that he is not sure of the fact that the continuance will be FILED. COPY of last page of letter here. WHEREFORE plaintiff begs the court grant continuance until 9-2-86 or at the convenience of the court and the defendants.

CERTIFICATION OF SERVICE—COPIES prepaid this 21st day of Aug.86 to the court and to the defendants, PAUL TAMAROFF, 16260 Ventura Bl. and to LAWRENCE ALLEN, 6950 CANOGA, WOODLAND HILLS, CAL. 91367.

Filed by Leo M. Mullen, M.D. 4443 Paseo Bl K.C. Mo. 64110-816-921-5411

(signed) Leo M. Mullen, M.D. Pro Se.

Leo M. Mullen, M.D. Pro Se.

STATE OF MISSOURI)
)
) SS.
COUNTY OF JACKSON)

EXHIBIT E

PETER J. KOPPE, of legal age, being first duly sworn, states that he is a licensed attorney, admitted to practice before the Courts of State of Missouri, the Federal District Court for the State of Missouri and also admitted to practice before the United States Supreme Court.

Further, that on the 22th day of August, 1986, Affiant called the Federal District Court for the Central District of California, and spoke with on Lori Blitzenstein, an Asst. Clerk regarding CV-86-1456-(JM1)(KX) which was set for a status conference before Judge James Ideman on Monday, August 25, 1986. Affiant identified himself to Ms. Blitzenstein, and indicated to them that due to a misunderstanding of the order and a misinterpretation of the date of the hearing, Plaintiff, Leo M. Mullen was due in another Court and could not travel the 1700 miles to Los Angeles for a Monday hearing. Affiant further suggested that he, a licensed attorney, could attend the conference for Plaintiff, pro hac vice, so that matters could be attended to. Affiant explained he was familiar with the file, and the allegations of both sides, but was told in no uncertain terms by Ms. Blitzenstein that he could not attend, as he was not attorney of record, was not admitted to practice in California, and when affiant suggested "pro hac vice" he was told that even if that courtesy was available, the "forms" were in Court and affiant would have to have local counsel anyway. When affiant suggested that this could be accomplished on Monday, before the hearing, he was advised by Ms. Blitzenstein, that he was wasting his time, that if Leo Mullen did not appear, his cause would be dismissed. She further stated that Dr. Mullen did everything wrong, that his pleadings were always wrong and that he did not comply with the Court's orders, and that it was obvious that he had no intention to comply with the Court's requirements.

Affiant further states that Ms. Blitzenstein's demeanor on the telephone was poor, she was abrasive, nasty, heavy handed and extremely opinionated regarding Leo M. Mullen, the plaintiff. In nearly ten years of the practice of law, affiant has never encountered such rudeness and hostility from a clerk, much less one he had never

talked to or met before. Ms. Blitzenstein's behavior gives rise to a supposition that she had taken sides in the matter, and was not about to give affiant the benefit of any assistance in the matter as he seemed to represent the other side.

Affiant further points out that he was forced to speak with Ms. Blitzenstein because when he called Judge Ideman's division prior to his call to the Asst. Clerk, he was told that Ms. Blitzenstein was the only person he could talk to, and that conversations with the Judge were prohibited. While there may be the rule in the jurisdiction, and may be such a rule for good reason when affiant is across the country, personal contact in Court is pretty much ruled out, and phone contact is a necessity. As such, affiant's attempts to contact the judge through his law clerk and Ms. Blitzenstein failed because the fiefdom created to insulate the Court operated in an arrogant and capricious manner to deprive Plaintiff of representation, and may well eventually deprive him of his day in Court as the matter has been dismissed by the Court for failure to attend the status conference.

Further, affiant sayeth not.

(signed) Peter J. Koppe
Affiant

Sworn and subscribed to, before me, a Notary Public, on this the 4th day of September, 1986.

(signed) Mary Marra
Notary Public

My Commission Expires:

(seal)

LEO M. MULLEN, MD.D. PRO SE
4443 PASEO BLVD.
KANSAS CITY, MO. 64110
1-816-921-5411
ATTORNEY-PRO SE.
FOR LEO M. MULLEN, M.D.

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

LEO M. MULLEN, M.D.	)	CASE NUMBER
PLAINTIFF	)	CV-86-1456-(JMI)KX)
	)	
vs	)	
	)	MOTION TO SET ASIDE
LAND PARCEL	)	order of the COURT
LIQUIDATORS, INCORP.	)	dated 8-26-86 and request
TAMARA STEINSAPIR,	)	FOR RESIGNATION
MARION MARSHAL	)	OF THE HON.
HILLWOOD ASSURANCE	)	JAMES M. IDEMAN
AND DONALD A ROSEN,	)	because of personal bias and
dba AS T.D. FORECLOSURE	)	prejudice as outlined
DEFENDANTS	)	in the affidavits attached.

COMES now LEO M. MULLEN, M.D. and states that the court is either bribed or personally biased and prejudiced and must rescind its order of 8-26-86 and any order written by PAUL TAMAROFF. THE plaintiff had reasonable cause to ask for a continuance and certainly has cooperated with the court in spite of false filings made by defendants. THE said Judge IDEMAN is so biased and prejudiced that his mind is bent and he could not make an impartial decision. IF LORI BLITZENSTEIN represents him and his position it is definitely a bribery, however, irrespective of bribery he is definitely personally biased and prejudiced and we say in medicine that such a bent mind is governed by the subconscious and obviously must rescind his decision and resign immediately.
Respectfully Submitted, Leo M. Mullen, M.D. Pro Se-816-921-5411
(signed) Leo M. Mullen, M.D. Pro Se
Copies prepaid -9-6-86 to the court and to the defendant
(signed) Leo M. Mullen, M.D. Pro Se
Leo M. Mullen, M.D. Pro Se 4443 Paseo Blvd., K.C., Mo. 64110

AFFIDAVIT

LEO M. MULLEN, M.D. of legal age being first duly sworn, states that he a licensed physician, M.D. and that he does real estate investing. ON or about FEB. of 1986 I filed lawsuit no. CV-86-1456-JMI-KX. in the CENTRAL DISTRICT OF CAL. THE case was scheduled for a status conference and the date was thought to be 8-27-1986. On 8-18-1986 the atty from ATLANTA notified be of my error. A motion for continuance was filed which is not unusual in a case more than one year from trial date. On FRIDAY my atty PETER KOPPE called the court to agree to appear but was notified by LORI BLITZENSTEIN as outlined in his affidavit attached. I called immediately after MR. KOPPE and was informed that LORI was allegedly in contact with TAMARA STEINSAPIR and that I would have to take the consequences for this lawsuit, which was according to her baseless and allegedly she had notice that the case was to be dismissed regardless who was present for my side. THE facts were that I was saying one thing and that the opponents were saying another and that any reasonable person would be convinced that not only was she representating the defendants but that she had, along with all of the false filings convinced the judge that he was either bribed or was so biased and prejudiced that he could not make a rational decision. HIS mind was obviously bent and such a mind cannot make any but an unfavorable decision. THE legal question presentated is determined by applying the reasonable man standard which facts and reasons I am stating in this affidavit. I believe that the judge has a personal bias and prejudice against me and in favor of the defendants. THE bend of the mind is so great that it prevents or impedes impartiality of judgement. BERGER vs U.S. SUPRA 255 U.S at 33, 41-S. CT. 233-65-L.ED. at 485. SEE also U.S. vs THOMPSON 3rd CIR-1973-483-F-2nd, 527. which states the standard as requiring that facts be such, their truth being assumed, as would convince a reasonable man that a bias exists.—also 433 F 2nd at 578. THE triparate test is 1. THE facts have been stated as material and with particularity. 2. any reasonable man would be convinced that a bias and man would be convinced that a bias and prejudice exists. 3. THE facts show that the bias is personal as stated. 483-F 2nd at 528—ID at 100. SEE also PARRISH vs BD OF COMMISSIONERS of ALABAMA STATE BAR—524-f 2nd, 98-(5th cir 1975. THIS affidavit is filed under 28 U.S.C. —144—or

28-U.S.C. —455-a-b-and clearly show personal bias and prejudice in favor of the adverse party. THE subconscious mind will never allow a bent mind to be impartial in any decision and the HON. JAMES M. IDEMAN must remove himself and reverse his decision of 8-25-86 which is filed dated 8-26-1986. THE affidavit is legally sufficient under U.S.C. NO. 455-a- which concludes THAT any reasonable man would conclude as MR. PETER KOPPE has done in his affidavit. SEE also PARRISH vs BD OF COMMISSIONERS of ALABAMA STATE BAR, SUPRA at 103.

The conclusion to be drawn is that using a standard the said HON. JAMES M. IDEMAN is either bribed to what he has done or that he could never make any impartial decision in this case and must resign.

FURTHER affiant sayeth no.

(signed) Leo M. Mullen, M.D., Pro Se
Affiant

Sworn and subscribed to before me, a notary public for the state of Missouri on this 6th day of Sept. 1986.

(signed) Loretta Wortham
Notary Public

My commission expires. Dec. 26, 1988

CONCLUSION

THIS IS AS MENTIONED A CRIMINAL CASE IN WHICH THE JUDGES are allowing crime to prevail. CRIME IN THE CIVIL COURTS is prevalent because the criminal is getting the same privileges as the one who is fleeced. I was fleeced in this case and spent a great deal of money for justice only to find that the judge IDEMAN was a party fo bribery and this was condoned by JUDGE RAFEEDIE and the 9th CT. of APPEALS. THE SUPREME COURT must not allow judges in the lower courts to allow crime to prevail. I have seen cases go for many months without being dismissed and 6 months to dismiss this case was only for the benefit of criminals who are operating in the civil courts rapantly because the are allowed to do so by judges who use some little technicality to prevail over white collar crime which cannot be prosecuted in the criminal justice system. AS outline earlier the case must be returned for trial to get justice. THE criminals in the civil courts get a lawyer who is just as bad as they are and attempts to use the court to see to it that crime pays. So far the crime involved here is paying off with the facts outlined. THE petition clearly outlines crime but JUDGE IDEMAN is a member of the same family ties as the defendants and this should never have been on the case to begin with. THE judges fault myself and it is obvious that they are merely attempting to uphold a fellow judge. JUDGE RAFEEDIE is an example and the writeup by the 9th circuit is deplorable as they have no in anyway applied the law involved. CLEARLY as cited earlier the case is one in which impermissible judicial conduct must be found as was found against JUDGE MARK CONSTANTINO who dismissed by case in BROOKLYN and the 2nd court of appeals found him guilty of impermissible judicial conduct. AS soon as this order was entered it was settled as this case should have been instead of all the money being spent to show my so called failure to prosecute and failure to cooperate. THE reports of JUDGES of the 9th circuit consistently fault me but fail to see that the court could not do its duty to give justice to a citizen who goes to the only tribunal that is available to right the wrongs done by fraud and fleecing of those who are involved as defendants. Since they get by with this it is continued and citizens are consistently fleeced in business deals like

the one involved here and the SUP. COURT must return the case for TRIAL.

SERVICE TO ALL PARTIES this 3rd day of May 1989 and all parties are served prepaid

(signed) Leo M. Mullen, M.D.

LEO M. MULLEN, M.D.
4443 PASEO BL K.C. MO. 64110 1-816-921-5411

Supreme Court, U.S.
FILED
AUG 18 1989
JOSEPH F. SPANIOL, JR.
CLERK

CASE NO. 89-36

In the United States Supreme Court

October Term 1989

Leo M. Mullen , M.D. Pro Se,

Petitioner

versus

Land Parcel Liquidators et al.,

Tamara Steinsapir, Marion Marshal,

Donald A. Rosen, DBA, T.D. Foreclosure Co.,

Respondents,

Brief in Opposition To

Petition for Writ of Certiorari

On Appeal From The United States

Court of Appeals for the Ninth Circuit

KLINT JAMES MCKAY

Attorneys for Respondent

Marion Marshal and

Hillwood Assurance Corporation

5950 Canoga Avenue, Suite 440

Woodland Hills, California 91367

(818) 716-1700

CASE NO. 89-36

In the United States Supreme Court

October Term 1989

Leo M. Mullen , M.D. Pro Se,

Petitioner

versus

Land Parcel Liquidators et al.,

Tamara Steinsapir, Marion Marshal,

Donald A. Rosen, DBA, T.D. Foreclosure Co.,

Respondents,

Brief in Opposition To Petition for Writ of Certiorari On Appeal From The United States Court of Appeals for the Ninth Circuit

KLINT JAMES MCKAY

Attorneys for Respondent

Marion Marshal and

Hillwood Assurance Corporation

5950 Canoga Avenue, Suite 440

Woodland Hills, California 91367

(818) 716-1700

TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

STATEMENT OF THE CASE 2

STATEMENT OF FACTS 3

OBJECTION TO PETITION FOR WRIT OF CERTIORARI BASED ON THE MERITS 6

I. Absent an Abuse of Discretion, the Refusal of a Court to Set Aside an Order or Judgment Will be Sustained Against an Appeal. 6

II. The Underlying Order of Judge Ideman Was Proper, Judge Rafeedie's Decision Was Proper by Federal Rule of Civil Procedure 60(b) and is Not an Abuse of Discretion. 10

III. The Fact That This Case Had Been Pending For Five Months Does Not Excuse Mullen's Absolute and Total Refusal to Comply with the Orders of the Court, and Supply Adequate Discovery to Defendants; Such Conduct Indicates a Pattern of Noncooperation and Failure of Prosecution Lending Additional Support to Dismissal of Mullen's Complaint 14

IV. Plaintiff Failed to Demonstrate in his Motion Before Judge Rafeedie Any Meritorious Claim, and on That Basis Alone, the Order of Judge Rafeedie Should Be Affirmed 17

V. The Federal Court of Appeals for the Ninth Circuit Correctly Upheld the District Courts Ruling 18

Objection to Petition for Writ of Certiorari Based on Lack of Jurisdiction and Petitioner's Failure to Comply with U.S. Supreme Court Rules 19
. .

Petitioner Has Failed To Comply With Rule 21 Procedures Regarding Petition For Writ Of Certiorari 19

Petitioner Has Failed To Comply With Rule 17 By Failing To Provide Any Grounds For This Court To Review The Federal Court Of Appeal Decision By Writ Of Certiorari. .23

CONCLUSION 26

CERTIFICATE OF SERVICE

TABLE OF AUTHORITIES

CASES Page

Beshear v. Weinzpfel, 474 F.2d 127 (1973) 16, 17

Delno v. Market St. Realty Co., 124 F.2d 965, 967 (9th Cir. 1942) 16

Dove v. Cadesco, 24 F.R. Serv. 2d 759, 569 F.2d 807 (CA 4th 1978). 15

Fischer v. Buehl, 15 F.R. Serv. 2d 759, 450 F.2d 950 (C.A. 3rd 1971). 15

Gomes v. Williams, 420 F.2d 1364 (10th Cir. 1970). 17

Link v. Wabash Railroad Co., 370 U.S. 626, 8 L.Ed 2d 634, 82 S.Ct. 1386 (1962) . 11,13

Meeker v. Rizley, 324 F.2d 269 (10th Cir. 1963). 6,10

Sadowski v. Bombardier Ltd., 539 F.2d 615 (7th Cir. 1976) 9

Schotkin v. Westinghouse Electric Manuf'g Co., 169 F.2d 825 (10th Cir. 1948) . . . 6

Sweeney v. Anderson, 129 F.2d 756 (10th Cir. 1942) 6

RULES/STATUTES

Federal Rules of Civil Procedure, Rule 60(b) 2, 8, 10, 18

Federal Rules of Civil Procedure, Rule 41(b) 2

United States Supreme Court Rule 17
. . . . . 23, 24, 25

United States Supreme Court Rule 21
. . . . . 19, 20, 21, 22, 23, 25

OTHER

7 Moore, Federal Practice, Section 60.22(2)
at 60-181 9

STATEMENT OF THE CASE

HILLWOOD ASSURANCE CORPORATION and Respondent MARION MARSHALL, for themselves alone (hereinafter for the sake of convenience collectively referred to as "RESPONDENTS"), oppose the Petition for Writ of Certiorari of LEO M. MULLEN, M.D. ("MULLEN"), based on the denial of MULLEN's motion to set aside judgment based on the fact that the Order on which MULLEN, seeks review is supported by Federal Rule 41(b) and 60(b) and applicable case law, and this Court should therefore affirm the ruling of the United States District Court (trial court) and Ninth Circuit Court of Appeals in this case.

In addition, the Petitioner has both failed to comply with the United States Supreme Court Rules of Procedure and has failed to allege any grounds whatsoever which allows this Court to assume jurisdiction over this case.

STATEMENT OF FACTS

Respondents will not embark at this late date in an involved and detailed journey through the convoluted and farcical pleadings and papers filed by Petitioner MULLEN herein, and will therefore be brief in recitation of the pertinent facts.

Suffice it to say that MULLEN is an individual whom, by his own admission, the State of Missouri has labeled "insane" and who has insisted on filing or has attempted to file numerous rambling motions and other documents, and in one case served Respondents with a poem in an apparent attempt to force settlement in this matter, albeit an unusual manner.

MULLEN bought land, at auction, from Respondents TAMARA STEINSAPIR and LAND PARCEL LIQUIDATORS. He, thereafter, failed to make payments on the property which was

foreclosed by Respondent T. D. FORECLOSURE SERVICE, and the property was resold. Petitioner MULLEN then sued all Respondents alleging "shills" were used, and "fraud" was committed, although MULLEN has never demonstrated one scintilla of evidence for any of his allegations.

From the inception of this case, MULLEN has refused and failed to cooperate with Respondents in responding to any discovery which has been served upon him, and in fact has been openly contemptuous of the Judges of the Central Federal District of California and the legal process in general. At a Mandatory Status Conference on August 25, 1986, all Respondents appeared through their counsel as required by the Court. MULLEN did not appear, citing various misunderstandings, misinterpretations, and other misapprehensions having very little to do with the facts in this matter.

On August 25, 1986, the Honorable Judge Ideman in the United States Distract Court for the Central District of California entered an order dismissing this action due to the non-cooperation by MULLEN and failure to appear as ordered by that Court on June 19, 1986. MULLEN soon thereafter filed papers to have the order set aside, which were returned to him due to his failure to comply with federal pleading requirements. Almost one year thereafter, MULLEN brought a "Motion to Set Aside Judgment" on August 20, 1987. In it, MULLEN tried to set aside the Order entered by the Honorable Judge Ideman on August 25, 1986.

This Motion was denied on December 22, 1987, by the Honorable Judge Rafeedie. Petitioner then appealed to United States Court of Appeal for the Ninth Circuit in April of 1988. On October 31, 1988, the Ninth Circuit denied the appeal and found

Petitioner's appeal to be "frivolous" and awarded appellees attorney fees. It is from this denial of his appeal to the Ninth Circuit that Petitioner now seeks review of his case by Writ of Certiorari to the United States Supreme Court.

OBJECTION TO THE PETITION FOR WRIT OF CERTIORARI BASED ON THE MERITS

I.

ABSENT AN ABUSE OF DISCRETION, THE REFUSAL OF A COURT TO SET ASIDE AN ORDER OR JUDGMENT WILL BE SUSTAINED AGAINST AN APPEAL

The law is clear that absent an abuse of discretion, the trial court will be sustained in its denial of a motion to set aside judgment or order. (Meeker v. Rizley, 324 F.2d 269 (10th Cir. 1963), citing Sweeney v. Anderson, 129 F.2d 756 (10th Cir. 1942) Schotkin v. Westinghouse Electric Manufacturing Corp., 169 F.2d 825

(10th Cir. 1948)).

In the instant case, MULLEN has engaged in a consistent and continuing pattern of noncooperation, abuse, and obstruction of justice in his attempts to extort a settlement from Respondents herein.

In addition, MULLEN does not dispute that he had ample notice of the hearing at which his Complaint was dismissed. Nor, amazingly, does he contend that anyone but himself was to blame for his nonappearance at this hearing. MULLEN states, and has stated throughout these proceedings, merely that he "overlooked" the date of said hearing, and should therefore be allowed a continuance. Before the actual date of the hearing, MULLEN was haranguing the trial court and filing incomprehensible papers in his attempts to acquire such a continuance. Clearly Judge Ideman was under no

obligation to award such a continuance; FRCP 60(b) provides that an order setting a scheduled hearing "shall not be modified except by leave of judge. . . when authorized by district court rule upon a showing of good cause." Judge Ideman had clear discretion to determine whether MULLEN's negligence constituted "good cause" under this rule.

Even assuming that MULLEN initially had valid grounds for bringing an application to set aside the order under FRCP 60(b), clearly his neglect in doing so until just before the outer limit of this rule provides ample ground for the denial of such motion by Judge Rafeedie. Such delay reinforces Respondents' contentions that MULLEN has, throughout this litigation, been dilatory in prosecuting same.

The law is clear that Rule 60(b) is not to be invoked to give relief to a

party whose error is traceable to a lack of care. (7 Moore, Federal Practice, 60.22(2), at 60-181; Sadowski vs. Bombardier Ltd., 539 F.2d 615 (7th Cir. 1976)). MULLEN has exhibited a palpable, continuous, and unremitting lack of care in his prosecution of this action, beginning with his obstruction of Respondents attempts to conduct discovery in this matter, continuing with his failure to make his motion to set aside the order of Judge Ideman until almost one year after the issuance of same, and ending with his attempts to file a brief in the Ninth Circuit Court of Appeals, which did not even marginally comply with the appellate court's requirements.

In addition, although this case had only been pending for five months, MULLEN had more than amply demonstrated his unwillingness to provide Respondents with any meaningful discovery whatsoever.

Clearly, based upon such evidence, Judge Rafeedie was within the bounds of his discretion in denying MULLEN'S motion to set aside the dismissal of Judge Ideman.

II.

THE UNDERLYING ORDER OF JUDGE IDEMAN WAS PROPER, JUDGE RAFEEDIE'S DECISION WAS PROPER UNDER FEDERAL RULE OF CIVIL PROCEDURE 60(b)AND IS NOT AN ABUSE OF DISCRETION

Judge Rafeedie, in his Order Denying Motion To Set Aside Judgment, conducted a thorough analysis of Federal Rule of Civil Procedure 60(b) as it applies to the facts at bar. His well reasoned and complete decision demonstrates a clear understanding of both the law and the facts as they relate to this matter. Since the Court must affirm Judge Rafeedie's decision absent an abuse of discretion (Meeker, supra), Respondents will briefly examine the basis for his

affirmation of the underlying decision of Judge Ideman.

A leading case on the subject of dismissal of a complaint for Plaintiff's failure to appear at hearings and cited by Petitioner is Link vs. Wabash Railroad Company, 370 U.S. 626, (1962), reh. den., 371 U.S. 873. It is instructive in its similarity to the case at bar. In this case, The United States Supreme Court affirmed a dismissal of plaintiff's claim where the only alleged failure of plaintiff to prosecute an action was the failure of plaintiff's counsel to appear at a pretrial hearing. (Link, supra, at 629.) The majority, through Justice Harlen, stated:

> "The authority of a federal trial court to dismiss a plaintiff's action with prejudice because of his failure to prosecute cannot

seriously be doubted (citations omitted). The power to invoke this sanction is necessary in order to prevent undue delays in the disposition of pending cases and to avoid congestion in the calendars of the district courts. The power is of ancient origin, having its roots in the judgments of nonsuit and nonprosequitor entered at common law. . . and dismissals for want of prosecution of bills in equity, . . . [i]t has been expressly recognized in Federal Rule of Civil Procedure 41(b). . .". Later, the court stated the rule

to be applied in such cases as follows:

> "The adequacy of notice and hearing respecting proceedings that may affect a party's rights turns, to a considerable extent, on the knowledge which the circumstances show such party may be taken to have of the consequences of his own conduct." (Link, supra, at 632).

Link specifically stated that if a plaintiff felt that his case was wrongfully dismissed, FRCP 60(b) was available to him.

It was these facts and this law that supports the ruling of Judge Rafeedie herein. Judge Rafeedie, in reviewing this case, correctly applied this rule, and since there is clearly no abuse of discretion, his decision should not be set aside.

III.

THE FACT THAT THIS CASE HAD BEEN PENDING FOR FIVE MONTHS DOES NOT EXCUSE MULLEN'S ABSOLUTE AND TOTAL REFUSAL TO COMPLY WITH THE ORDERS OF THE COURT, AND SUPPLY ADEQUATE DISCOVERY TO DEFENDANTS; SUCH CONDUCT INDICATES A PATTERN OF NON COOPERATION AND FAILURE OF PROSECUTION LENDING ADDITIONAL SUPPORT TO DISMISSAL OF PETITIONER'S COMPLAINT

The failure of MULLEN to appear at the mandatory status conference hearing in this case was only one in a series of obstructive behavior in which MULLEN had engaged. MULLEN has refused to answer Interrogatories, refused to answer Requests for Admissions, attempted to add Respondents' counsel to the lawsuit due to their actions in defense of their clients, accused two separate trial judges of bribery, and taken other actions that demonstrate beyond any reasonable doubt

MULLEN'S contempt for the Federal Judicial System in general, and the rights of Respondents in particular.

MULLEN, although only before the Central District of California for five months in this matter, had previously prosecuted this case in a federal district in Missouri. After this case was dismissed there, MULLEN refiled same in California. Therefore, MULLEN has had an ample opportunity to prosecute his case and has shown only an unwillingness to abide by applicable rules and Federal Statutes.

Cases holding that a dismissal by a district court of MULLEN'S action for failure to attend a pre-trial conference uniformly state that in those cases there was no evidence of deliberate delay. (See for example, Dove v. Cadesco, 24 F.R. Serv. 2d 967, 569 F.2d 807 (C.A. 4th 1978); Fischer v. Buehl, 15 F.R. Serv. 2d 759, 450 F.2d 950 (C.A. 3rd 1971)).

It has been held that a context of facts reflecting a "lack of prosecutive intent" will support the denial of a motion for relief from dismissal under Rule 60(b), see Beshear v. Weinzapfel, 474 F.2d 127 (7th Cir. 1973). In that case, as in this one, there was a conflict of facts aside from the failure to appear at a pretrial conference, which supported dismissal by the trial Court. The court in Beshear, citing with approval Delno vs. Market St. Realty Company, 124 F.2d 965, 967 (9th Cir. 1942), held:

> "Discretion is abused only where no reasonable man would take the view adopted by the trial court. If reasonable men could differ as to the propriety of the action taken by the trial court, then it cannot be said

that the trial court
abused its discretion."
(Beshear, at 134).

IV.

PETITIONER FAILED TO DEMONSTRATE IN HIS MOTION BEFORE JUDGE RAFEEDIE ANY MERITORIOUS CLAIM, AND ON THAT BASIS ALONE, THE ORDER OF JUDGE RAFEEDIE SHOULD BE AFFIRMED

The law is clear that any motion under FRCP 60(b) for relief must be buttressed by a showing of existence of a meritorious claim. This requirement was set forth extensively in Gomes vs. Williams, 420 F.2d 1364 (10th Cir. 1970), and cited with approval in Beshear, supra, at 132. In Gomes, although there was excusable neglect (a fact which is not present in the case at bar), where movant did not demonstrate a meritorious claim, his motion for relief from dismissal under

FRCP 60(b) was properly denied.

In this case, this Court can verify for itself that nowhere in any of Petitioner's papers has Petitioner demonstrated a legally cognizable claim against Respondents herein.

V.

THE FEDERAL COURT OF APPEALS, NINTH CIRCUIT CORRECTLY UPHELD THE LOWER COURT'S RULING

In affirming its decision below, the Ninth Circuit court of appeals found that MULLEN did not make his 60(b) motion within a reasonable time, and that MULLEN's failure to appear at the mandatory settlement conference was the result of his own culpable conduct. The court of appeal found no evidence of prejudice or bias against MULLEN stemming from an extrajudicial source. Finally, in awarding appellees (Respondents herein) attorneys fees, the Ninth Circuit stated: "Mullen's

appeal is frivolous because his motion is based on completely unsubstantiated claims of excusable neglect made almost one full year after he attempted to file a procedurally defective motion based upon the same claims." The Court of Appeals decision should not be disturbed.

OBJECTION TO PETITION OF WRIT OF CERTIORARI BASED ON LACK OF JURISDICTION AND PETITIONER'S FAILURE TO COMPLY WITH U.S. SUPREME COURT RULES

I.

PETITIONER HAS FAILED TO COMPLY WITH RULE 21 PROCEDURES REGARDING PETITION FOR WRIT OF CERTIORARI

United States Supreme Court Rule 21 provides that the Petition for Writ of Certiorari shall contain various items as outlined in (a)-(j). These items are not contained in MULLEN's Petition for Writ of

Certiorari.

Rule 21(1)(a) provides that the Petition shall contain questions presented for review. Review of the Brief of Petitioner reveals no questions presented for review but only four statements under a heading entitled "questions presented for review". These four statements by Petitioner contain various reasons why Petitioner believes that he has been treated unjustly by the courts below but does not present any questions for review.

Rule 21 (1) (b) provides that the Petitioner shall list in the petition for writ of certiorari all parties to the proceeding. The caption in the Petition does not contain one of these defendants/appellees, that is Hillwood Assurance Corporation. In addition, on page 4 of the Petitioner's Brief there is a certificate of service of additional parties, which does not indicate Hillwood

Assurance Corporation as a Respondent. Therefore, Hillwood Assurance Corporation is not sure whether Petitioner is appealing to the United States Supreme Court as to it since, Hillwood Assurance obtained judgment in its favor and an award of costs in the courts below against Petitioner. Hillwood has, however, filed this objection in conjunction with respondent Marion Marshall.

Rule 21 (1) (e) requires that the petition set forth a concise statement on the grounds on which the jurisdiction of the court is invoked. This includes the date of the judgment of decree, which is to be reviewed in the time of this entry. Petitioner's Brief does not contain such dates or description of any judgment of which it seeks review, nor does it contain a jurisdictional statement. Specifically, sub(e)(4) requires that the petitioner set forth the statutory provision believed to

confer jurisdiction to review the judgment decree in question by writ of certiorari. Petitioner's Brief does not contain any such reference.

Similarly, Sub(f) requires that the petitioner sets forth constitutional provisions, treaties, statutes, ordinances, or regulations that the case involves with a verbatim citation to the appropriate authorities. Again, Petitioner's Brief does not contain any such references, nor any verbatim citations thereto.

Subparagraph of Rule 21(g) requires a concise statement of the case containing the facts material to the consideration of the question presented. There is no statement of the case contained in the Brief but instead, on pages 5 and 6, Petitioner makes a personal statement about his "feelings" as to his treatment in regard to the case below and his subsequent treatment by the appellate court.

Rule 21(i) requires the statement of the case shall also show the basis for federal jurisdiction in the court for first instance if the appeal is from the judgment of the federal court. The Brief does not contain any such jurisdictional reference.

Finally, 21(j) requires a direct and concise argument amplifying the reasons relied on for the allowance of the writ, which references Rule 17. As discussed more fully below, petitioner has set forth no reason to allow this Court to consider review of the federal court ruling by Writ of Certiorari.

II.

PETITIONER HAS FAILED TO COMPLY WITH RULE 17 BY FAILING TO PROVIDE ANY GROUNDS FOR THIS COURT TO REVIEW THE FEDERAL COURT OF APPEAL DECISION BY WRIT OF CERTIORARI.

As set forth in Rule 17, (1) the

United States Supreme Court has set forth grounds upon which it will consider granting review of a federal court of appeal's decision. In order to obtain review by the United State Supreme Court, the federal Court must have rendered a decision in conflict with the decision of another federal court of appeals on the same matter, or has decided a federal question in a way in conflict with a state court of last resort or as so far departed from the accepted and usual course of judicial proceedings or so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.

Petitioners's Brief sets forth absolutely no grounds upon which this court should assume jurisdiction based on the foregoing premises set forth in Rule 17.

Subparagraph (1)(c) of Rule 17, also permits the Supreme Court to assume

review of a federal court of appeals decision if an important question of federal law has been decided and which has not been but should be settled by the United States Supreme Court, or has decided a federal question of weighing conflict with an applicable decision of the United States Supreme Court. Again, Petitioner has failed to set forth, any such grounds for consideration of his case by this Court, as required by this subsection.

Respondents cannot intelligently respond to the Brief of Petitioner as it is unintelligible, rambling and utterly fails to conform with the United States Supreme Court procedural rules and contains no statement of jurisdiction to which Respondents can address any objection. As set forth above, the Petitioner's Brief so completely fails to conform with the requirements of Rules 17 and 21, that Respondents cannot properly respond to any

jurisdictional basis for this Petition, Respondents cannot even determine which parties are actually part of this Petition for Writ of Certiorari. Without these essential items in the Brief, it is futile to conjecture and attempt to address any of the statements outlined in Petitioners' Brief.

CONCLUSION

Petitioner's Brief is simply a rambling recapitulation of his belief that he has been the subject of injustice and he is using this petition as a forum to voice his personal feelings.

MULLEN has consistently attempted to subvert the ends of justice, has failed to cooperate in any manner with the discovery of Respondents, has set forth no cognizable claim against Respondents in his papers, and has failed to appear at a court-ordered hearing of which he had

admittedly ample notice. These are just the highlights of a course of conduct and a context of facts that underlay the decision and order of Judge Rafeedie. The Ninth Circuit Court of Appeals concurred. Clearly, there are no grounds whatsoever to grant Petitioner's Writ of Certiorari, and for the reasons stated above, the petition for Writ of Certiorari should be denied as lacking jurisdiction.

DATED: 8/16/89

Respectfully submitted,
LAWRENCE ALLEN,
A Professional Law
Corporation

By Klint James McKay
KLINT JAMES McKAY
Attorneys for Respondents
HILLWOOD ASSURANCE
CORPORATION AND MARION
MARSHALL

CERTIFICATE OF SERVICE

The undersigned represents and certifies that I am over the age of 18 years, that I am employed by the law offices of ALLEN & ALLEN, A Professional Law Corporation, 5950 Canoga Avenue, Suite 440, Woodland Hills, California 91367, and that on August 17, 1988, I caused to be deposited in the United States Mails, postage prepaid, a copy of Respondent's Brief in objection to Petition for Writ of Certiorari, addressed to the following parties:

Leo Mullen, M.D., pro se
4443 Paseo Boulevard
Kansas City, Missouri 64110

Paul K. Tamaroff, Esq.
4 Carlise Way
Atlanta, GA 30308

Jack Altman, Esq.
18040 Sherman Way,
Suite 350
Reseda, CA 91335

I declare under penalty of perjury that the foregoing is true and correct and that this document is executed on this 17 day of August, 1988, at Los Angeles, California.

CARMEN O'NEIL